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March 22, 2023

The Honorable Ann M. Donnelly
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Douglass Mackey, Criminal Docket No. 21-0080 (NGG)

Dear Judge Donnelly:

Yesterday, over objection, the Court permitted the government to admit a silhouette photograph of defendant Douglass taken during an interview and accompanying testimony from witness Loren Feldman about Mr. Mackey's anonymity. I request that the testimony and exhibit immediately be struck. By order dated March 17, 2023, Judge Garaufis precluded such evidence: "The Government will not be permitted to frame Defendant Mackey's general attempts to keep his online life separate from his in-person life as nefarious Statements regarding the use of anonymity from [before the start of the charged conspiracy] are not relevant to the charged conduct and thus may not be introduced at trial." Docket No. 100 at 4-5.

In addition to striking the evidence admitted in contravention of the Court's order, I request that the Court immediately instruct the jury, as Judge Garaufis expressly found, that "the First Amendment to the United States Constitution protects the right to publish anonymously. Mr. Mackey's exercise of that right does is therefore not relevant to this case and may not be considered by you as evidence of his guilt unless you find that Mr. Mackey did so during the period of the charged conspiracy for the particular purpose of effectuating the charged crime."

Respectfully submitted,

/s/ Andrew J. Frisch
Andrew J. Frisch

cc: US Attorney's Office